

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated July 28, 2008. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-15 are pending in the Application.

In the Office Action, it is asserted that claims 8-11 are directed to an invention that is independent or distinct from the invention originally claimed because it is alleged that the inventions are independent since they are not connected in design, operation or effect, because each invention is separately usable and the operation, design and effect of one is independent of the other. This restriction requirement is respectfully traversed.

As a first point, it is respectfully submitted that the standard for an application submitted under 35 U.S.C. §111 is that the claims must be separate and distinct. The Office Action has stated that the claims are independent (separate) yet has provided no position on whether the claims are distinct.

Further, it is respectfully submitted that the Office Action in addressing independence of the claims, has done no more than provide a conclusory statement that the inventions are independent,

without providing any clear explanation for why this conclusion is reached. While it is admitted that the claims are parts of two different independent claim groups (each of claims 2-7 and 12-15 depend from claim 1 and claims 9-11 depend from claim 8), this is not sufficient for a holding that they are separate and distinct.

In fact, it is Applicants' position that the claims are drawn essentially to a single embodiment (see, FIG. 2 of the present patent application) defining the same essential features and are not drawn to separate inventions.

The MPEP in § 806.03 makes clear that (emphasis provided) "[w]here the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required." The MPEP goes on further to state the motivation for the above requirement is "because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

The MPEP in §803 makes clear that a restriction between patentably distinct inventions is only proper if the inventions are independent or distinct as claimed and there is a serious burden on the examiner if a restriction is not required. A serious burden on

the examiner is *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search (see, further MPEP §808.02). However, where "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." Yet, the Office Action has done no more than to state that they are separate and distinct without any suitable showing or explanation for this distinction.

Further, it is respectfully submitted that since the present application is submitted under 35 U.S.C. §371, the proper consideration for requiring separation of claims is under Unity of Invention considerations under PCT Rules 13.1 and 13.2.

It is respectfully submitted that the restriction requirement is in error and is not supportable under PCT Rules 13.1 and 13.2 since each of the claims share a single general inventive concept, namely "driving means for driving the tools, a holder for holding the tools, which holder can be driven by the driving means and which holder is equipped with a holder wall and which holder has a window in the holder wall, in said window the tools held by the

holder can be positioned one at a time, wherein the at least two tools are combinable to form a tool unit, wherein the tool unit is relocatable in relation to the holder, wherein one tool at a time from the tool unit can be positioned in the window, in which case the at least one other tool is aligned facing towards the holder wall and covered by the holder wall, and wherein a fixing means is provided for fixing the tool unit to the holder" as recited in claim 1. Claim 8 recites similar elements but eliminates "means for ..." language from the claims that was provided in the PCT application for International Prosecution, but may have particular and distinct meaning under U.S. prosecution. It is respectfully submitted that under PCT Rule 13.2, unity of invention between claims 1 and 8 is fulfilled since between claims 1 and 8 there is a "relationship among those inventions involving one or more of the same or corresponding special technical features." Further, it is respectfully submitted that the consideration of unity of invention should be made regardless of the fact that claims 1 and 8 are separate claims (see, PCT Rule 13.3). So while each of claims 1 and 8 are independent, each of these inventions nonetheless involve one or more of the same or corresponding special technical features so as to fulfill unity of invention requirements.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn and that the claims be examined on the merits. In the event that this restriction requirement is upheld, it is respectfully requested that it be restated in a non-final form with proper support for the requirement so that the Applicants may address that support in a subsequent response.

In the Office Action, claims 1-7 and 12-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting regarding U.S. Patent No. 6,418,837, to Obersteiner ("Obersteiner"). The Office Action asserts that "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious variation of the other set of claims of US 6,418,837." No explanation, directed to the claims of either of the present application or Obersteiner is provided for how this conclusion is reached. This double patenting rejection is respectfully traversed. It is respectfully submitted that the claims of the present application and the claims Obersteiner are patentably distinct. It is respectfully submitted that the test for double patenting requires a comparison of the claims of Obersteiner and the claims of the present patent application.

While both of the present claims and the claims of Obersteiner are directed to a kitchen appliance, it is submitted that each are directed to different features of a kitchen appliance. Claim 1 of the Obersteiner is directed to a kitchen appliance having a first cover configuration for closing the container, . . . , and a cover wall, which covers the access opening at least for the greater part, and in which a second cover configuration has been provided, . . . , and in which the first cover configuration and the second cover configuration together bound a hollow space, and in which the hollow space serves to and is adapted to accommodate at least one accessory of the kitchen appliance. Claims 1 and 8 for example of the present application are directed to a kitchen appliance including at least two tools that are combinable to form a tool unit, . . . , wherein one tool at a time from the tool unit can be positioned in the window, in which case the at least one other tool is aligned facing towards the holder wall and covered by the holder wall, and wherein a fixing means is provided for fixing the tool unit to the holder.

It is respectfully submitted that although each of Obersteiner and the present application as presently claimed may be directed to solving a similar problem, namely storage of accessories of the

kitchen appliance, the claims of each recite significant different technical features for solving the problem. For example, the claims of Obersteiner do not disclose or suggest two tools are combinable to form a tool unit, ..., wherein one tool at a time from the tool unit can be positioned in the window, in which case the at least one other tool is aligned facing towards the holder wall and covered by the holder wall as recited in claim 1 and similarly recited in claim 8 of the present application.

Accordingly, since the claims of Obersteiner and the claims of the present application are directed to significantly different technical features, withdrawal of the double-patenting rejection to claims 1-7 and 12-15 is respectfully requested.

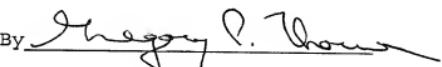
Based on the foregoing, the Applicants respectfully submit that claims 1-15 are allowable and an indication to that effect is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position,

should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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